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7 A BILL
8 TO BE ENTITLED
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10 AN ACT relating to regulating the business con-
11 duct of persons drilling water wells;
12 placing the duty and expense of plugging
13 water wells on the owner of the well or
14 on the person having the well drilled;
15 repealing Chapter 458, Acts of the 57th
16 Legislature, Regular Session, 1961; and
17 declaring an emergency.
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19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
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21 SUBCHAPTER A. GENERAL PROVISIONS.

22 Section 1. SHORT TITLE. This Act may be cited as the Water Well
23 Drillers Licensing Act.

24 Sec. 2. DEFINITIONS. In this Act, unless the context requires a
25 different definition,

26 (1) "person" includes firm, association, partnership, and
27 corporation;

28 (2) "commission" means the Texas Water Commission;

29 (3) "board" means the Water Well Drillers Examining Board.

30 SUBCHAPTER B. ORGANIZATION AND ADMINISTRATION.

31 Sec. 3. CREATION AND MEMBERSHIP OF BOARD. There is
32 created a Water Well Drillers Examining Board. The board consists of
33 seven members.

34 Sec. 4. APPOINTMENT AND TERMS OF OFFICE. (a) The execu-
35 tive secretary of the State Water Pollution Control Board and the director
36 of the ground water division of the Texas Water Commission are, ex
37 officio, members of the board.

38 (b) The governor, with the advice and consent of the senate, shall
39 appoint the other five members of the board for staggered terms of six
40 years.

41 Sec. 5. QUALIFICATIONS OF APPOINTED BOARD MEMBERS.

42 (a) The governor shall appoint as a member of the board one person who
43 resides in the Gulf Coast area of the state; one who resides in the Trans-
44 Pecos area; one who resides in the Central Texas area; one who resides
45 in the Northeast area; and one who resides in the Panhandle-South Plains
46 area.

47 (b) To be qualified for appointment, a person must

48 (1) be licensed under this Act;

49 (2) have been a water well driller for at least 10 years;

50 (3) be a citizen of the state.

51 (c) No more than one member of the board may be employed by, or
52 own an interest in, a company or business association which is engaged in
53 any phase of the water well drilling business.

54 Sec. 6. BOARD MEETINGS AND OFFICERS. (a) The board shall
55 hold a regular annual meeting. It may hold a special meeting at the call
56 of the chairman or at the request of three board members.

57 (b) A majority of the board is a quorum for conducting business.

58 (c) The board shall elect its officers.

59 Sec. 7. ASSISTANTS. The board, with the approval of the com-
60 mission, may employ assistants to investigate alleged violations of this

61 Act.

1 Sec. 8. DUTIES OF THE BOARD. The board shall
2 (1) pass on qualifications of applicants for licenses and issue
3 licenses to those who qualify;
4 (2) prepare and grade examinations;
5 (3) after hearing, suspend or revoke the license of a licensee
6 who
7 (A) intentionally misstated a fact in his application for a
8 license;
9 (B) intentionally misstates or misrepresents a fact in a well
10 log report;
11 (C) in conducting his water well drilling business, conducts
12 himself in a way that indicates he is not a competent water well driller;
13 (D) violates Section 33 or Section 34 of this Act.
14 Sec. 9. BOARD RULES. (a) The board shall adopt procedural rules
15 (1) describing how a person applies for and takes an examina-
16 tion under this Act;
17 (2) implementing the notice and hearing provisions of this Act.
18 (b) The board shall adopt substantive rules defining conduct which,
19 if engaged in by a water well driller, is evidence of incompetence.
20 Sec. 10. DUTIES OF COMMISSION. (a) The commission shall
21 furnish the board with administrative services, including providing space
22 for holding examinations; proctoring examinations; printing examinations;
23 printing and mailing licenses; sending notices, before August 1 of each
24 year, that licenses must be renewed; collecting fees and issuing receipts;
25 keeping a current register of licensees; employing secretarial assistants;
26 replying to routine requests for information; printing forms and infor-
27 mational bulletins; typing all matter to be reproduced; maintaining
28 records and completed examinations; and keeping records of receipts and
29 disbursements.
30 (b) The board has access to information kept by the commission
31 under this Act.
32 Sec. 11. COMMISSION RULES. The commission shall adopt proce-
33 dural rules necessary to carry out the duties imposed on it by Section 10
34 of this Act.
35 Sec. 12. PROCEDURE FOR ADOPTING AND AMENDING SUB-
36 STANTIVE RULES. (a) Before the board may adopt a substantive rule
37 under this Act, it must mail a copy of the proposed rule or amendment,
38 or an informative summary of the rule or amendment, to each person
39 licensed under this Act.
40 (b) The rule or amendment takes effect on the fourteenth day after
41 the day the summary is mailed, unless
42 (1) the board specifies that it take effect at a later time; or
43 (2) the board rescinds the order adopting the rule or amendment.
44 (c) The board may rescind, but it may not change, the order adopt-
45 ing a rule or amendment from the time the notice is mailed until the rule
46 or amendment takes effect. After the rule or amendment takes effect,
47 the board may repeal or change it only by adopting an order repealing or
48 amending it.
49 (d) If the board rescinds an order for a rule or amendment, it may
50 adopt a new rule or amendment at any time, even though the new rule or
51 amendment is on the same subject as the rule or amendment rescinded.
52 (e) The commission shall supply each person licensed under this
53 Act with a copy of the rules of the board, and of all changes in the rules.
54 Sec. 13. DEFINITION. In Sections 13 through 20 of this Act,
55 "contested case" means a proceeding before the board in which the legal
56 rights, duties, or privileges of specific parties are required by law or
57 constitutional right to be determined after a board hearing.
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1 Sec. 14. HEARING OFFICER. In a contested case, the board shall
2 use an attorney member of the commission's staff to serve as the hearing
3 officer in the hearing. At the hearing, the hearing officer shall
4 (1) preside over the hearing;
5 (2) rule on the admissibility of evidence;
6 (3) at the direction of the board, prepare the record, decision,
7 and order of the board and the notices for the hearing;
8 (4) assist the board in all legal matters connected with the
9 hearing.

10 Sec. 15. NOTICE, HEARING, RECORDS. (a) In a contested case
11 all parties shall be afforded an opportunity for hearing after reasonable
12 notice. The notice shall state the time, place, and issues involved, but
13 if, because of the nature of the proceeding, the issues cannot be fully
14 stated in advance of the hearing, or if subsequent amendment of the issues
15 is necessary, the issues shall be fully stated as soon as practicable, and
16 opportunity shall be afforded all parties to present evidence and argu-
17 ment with respect to the issues.

18 (b) The board shall prepare an official record, including testimony
19 and exhibits, in each contested case, and shall prepare a mechanical
20 recording of the proceedings. It is not necessary to transcribe the
21 recording unless the transcription is requested for purposes of rehearing
22 or court review.

23 (c) Informal disposition may also be made of any contested case by
24 stipulation, agreed settlement, consent order, or default.

25 Sec. 16. RULES OF EVIDENCE. (a) In contested cases, the board
26 may admit and give probative effect to evidence which possesses proba-
27 tive value commonly accepted by reasonably prudent men in the conduct
28 of their affairs. The board shall give effect to the rules of privilege
29 recognized by law. It may exclude incompetent, irrelevant, immaterial,
30 and unduly repetitious evidence.

31 (b) All evidence, including those of the board's records and docu-
32 ments it decides to use, shall be offered and made a part of the record in
33 the case, and no other factual information or evidence shall be considered
34 in the determination of the case. Documentary evidence may be received
35 in the form of copies or excerpts, or by incorporation by reference.

36 (c) Every party has the right to cross-examine witnesses who testify,
37 and has the right to submit rebuttal evidence.

38 Sec. 17. OFFICIAL NOTICE. The board may take notice of judi-
39 cially cognizable facts and in addition may take notice of general,
40 technical, and scientific facts within its specialized knowledge. Parties
41 shall be notified either before or during hearing, or by reference in
42 preliminary reports or otherwise, of the material so noticed, and they
43 shall be afforded an opportunity to contest the facts so noticed. The
44 board may use its experience, technical competence, and specialized
45 knowledge in evaluating the evidence presented to it.

46 Sec. 18. EXAMINATION OF EVIDENCE BY BOARD. When in a
47 contested case a majority of the members of the board who are to render
48 the final decision have not heard or read the evidence, the decision, if
49 adverse to the party to the proceeding other than the board itself, shall
50 not be made until a proposal for decision, including findings of fact and
51 conclusions of law, has been served upon the parties and an opportunity
52 has been afforded to each party adversely affected to file exceptions and
53 present argument to a majority of the members who are to render the
54 decision, who shall personally consider the whole record or as much of it
55 as may be cited by the parties.

56 Sec. 19. DECISIONS AND ORDERS. Every decision and order
57 adverse to a party to the proceeding, rendered by the board in a con-
58 tested case, shall be in writing or stated in the record and shall be
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1 accompanied by findings of fact and conclusions of law for each contested
2 issue. Parties to the proceeding shall be notified of the decision and
3 order in person or by mail. A copy of the decision and order and
4 accompanying findings and conclusions shall be delivered or mailed upon
5 request to each party or to his attorney of record.

6 Sec. 20. JUDICIAL REVIEW OF CONTESTED CASES. (a) A person
7 aggrieved by a final decision in a contested case, whether the decision is
8 affirmative or negative in form, is entitled to judicial review of the
9 decision.

10 (b) Proceedings for review shall be instituted by filing a written
11 statement complaining of the board's decision in the Third Court of Civil
12 Appeals at Austin within 30 days after the service of the final decision of
13 the board. The statement shall specify concisely each finding, conclu-
14 sion, or action of the board with which the aggrieved party disagrees.
15 Copies of the statement shall be served upon the board and all other
16 parties of record. The court, in its discretion, may permit other
17 interested persons to intervene.

18 (c) Filing the statement does not stay enforcement of the board
19 decision; but the board may do so, or the reviewing court may order a
20 stay upon such terms as it deems proper.

21 (d) Within 30 days after service of the statement, or within such
22 further time as the court may allow, the board shall transmit to the
23 reviewing court the original or a certified copy of the entire record of the
24 proceeding under review; but, by stipulation of all parties to the review
25 proceeding, the record may be shortened. A party unreasonably refusing
26 to stipulate to limit the record may be taxed by the court for the additional
27 costs caused by his refusal. The court may require or permit subsequent
28 corrections or additions to the record when deemed desirable.

29 (e) If, before the date set for hearing, application is made to the
30 court for leave to present additional evidence on the issues in the case,
31 and it is shown to the satisfaction of the court that the additional evidence
32 is material and that there were good reasons for failing to present it in
33 the proceeding before the board, the court may order that the additional
34 evidence be taken before the board upon such conditions as the court
35 deems proper. The board may add to or modify its findings, conclusions,
36 and decision in light of the additional evidence and shall file with the
37 reviewing court, as part of the record, the additional evidence, together
38 with any additions or modifications to its findings, conclusions, or
39 decision.

40 (f) The review shall be conducted by the court and shall be confined
41 to the record, except that in cases of alleged irregularities in procedure
42 before the board, not shown in the record, testimony on the alleged
43 irregularities may be taken in court. The court shall, on request, hear
44 oral argument and receive written briefs.

45 (g) The court may affirm the decision of the board or remand the
46 case for further proceedings; or it may reverse or modify the decision if
47 the substantial rights of the petitioners may have been prejudiced because
48 the administrative findings, inferences, conclusions, or decisions are

49 (1) in violation of constitutional provisions;
50 (2) in excess of the statutory authority or jurisdiction of the
51 board;

52 (3) made upon unlawful procedure;
53 (4) affected by other error of law;
54 (5) unsupported by competent, material, and substantial
55 evidence in view of the entire record as submitted; or
56 (6) arbitrary or capricious.

57 Sec. 21. COMPENSATION. Members of the board are entitled to
58 compensation of \$25 a day for each day spent in attending to the business
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1 of the board and for going to and returning from attending to that business;
2 and are entitled to actual expenses incurred in attending to the business
3 of the board.

4 SUBCHAPTER C. LICENSING.

5 Sec. 22. LICENSE REQUIRED. No person may, for compensation,
6 drill, bore, core, or construct a water well on the land of another unless
7 he is licensed under this Act.

8 Sec. 23. EXAMINATION. A person who passes the examination
9 given by the board is entitled to be licensed under this Act.

10 Sec. 24. CONTENT OF EXAMINATION. The board shall design the
11 examination so as to disqualify a person whose lack of knowledge of
12 drilling methods and techniques and of the geology and ground water
13 formation in the area in which he expects to drill would create a serious
14 risk of polluting fresh water.

15 Sec. 25. ADMINISTRATION OF EXAMINATION. (a) The com-
16 mission shall offer examinations prepared by the board at least once a
17 year and more frequently if more than 10 persons petition the commission
18 for an additional examination.

19 (b) Examinations shall be so administered that one who grades an
20 examination does not know whose paper he is grading.

21 (c) The commission shall maintain files of examination papers.
22 A person, at any time within six months of the date he is notified of the
23 results of the examination, is entitled to inspect his examination paper
24 during normal business hours at the commission's office for the purpose
25 of challenging the propriety of its questions, the method of grading, and
26 the accuracy of grading.

27 (d) If a person fails to take an examination after he has paid the
28 application fee, the commission shall refund all but \$10 of the application
29 fee.

30 Sec. 26. RE-EXAMINATION. A person who fails an examination
31 may apply for a subsequent examination, but must pay the application fee
32 each time he applies. He may not petition for an additional examination
33 under Section 25(a) of this Act, but may take one if it is offered.

34 Sec. 27. QUALIFICATIONS FOR EXAMINATION. A person is
35 entitled to take the examination who

36 (1) within the time specified by a commission rule, returns
37 application forms to the commission, showing information specified in
38 rules of the board;

39 (2) pays the application fee.

40 Sec. 28. LICENSE NOT TRANSFERABLE. A license issued under
41 this Act is not transferable.

42 Sec. 29. FEES. The fee to apply for a license is \$50. The annual
43 license renewal fee is \$25. The fee for an out-of-state license is \$50.
44 The fee for a duplicate license is \$1.

45 Sec. 30. DEPOSIT IN GENERAL FUND. The commission shall
46 deposit money collected under this Act in the state treasury in the general
47 fund.

48 Sec. 31. ANNUAL RENEWAL. A person who passes the examination
49 is licensed without payment of further fee. To remain licensed, a person
50 must pay the renewal fee before September 1 of each year. The board
51 shall renew a lapsed license when the licensee applies for renewal and
52 pays accrued renewal fees. He is entitled to have the license renewed
53 without taking an examination unless his license has lapsed more than 10
54 years, in which case he is required to take an examination if the board
55 finds that additional evidence of his continued ability to drill wells is
56 required.

57 Sec. 32. OUT-OF-STATE LICENSE. A person who is a certified,
58 registered, or licensed water well driller in another state is entitled to
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1 be licensed as a water well driller in Texas without examination if he
2 completes application forms and returns them to the commission, pays
3 the out-of-state license fee, and has passed an examination in the other
4 state which in the opinion of the board covers substantially the same
5 subjects the board's examination covers.

6 SUBCHAPTER D. MISCELLANEOUS PROVISIONS.

7 Sec. 33. REPORTING WATER WELL LOGS. (a) A person licensed
8 under this Act shall keep an accurate water well log, showing the depth,
9 thickness, and character of the different strata penetrated and the loca-
10 tion of water strata, for each water well he drills or alters.

11 (b) The board may, by rule, require licensees to keep additional
12 information in water well logs.

13 (c) The licensee shall send, on forms prescribed by the board, a
14 copy of each water well log he keeps to the commission within 60 days
15 of the day he completes or stops working on a water well.

16 Sec. 34. PLUGGING WELLS. It is the duty of the owner of a water
17 well, or the person having a water well drilled, to plug the well in a
18 manner that will prevent injurious water in the well from harming land or
19 fresh water. It is the duty of the person who drills the well to

20 (1) advise the well owner, or the person having the well drilled,
21 that the well should be plugged at the expense of the owner or of the
22 person having the well drilled;

23 (2) make a full report of the method of plugging the well in his
24 water well log.

25 Sec. 35. REGISTERING VEHICLES OF WATER WELL DRILLERS.
26 The assessor and collector of taxes of a county shall refuse to register a
27 motor vehicle, rig, trailer, or other vehicle used in water well drilling
28 operations until the owner of the vehicle presents to the assessor and
29 collector of taxes a valid license issued under this Act, and executes an
30 affidavit stating that he and all his employees have fully complied with
31 the requirements of this Act.

32 Sec. 36. ACT DOES NOT APPLY IN DROUGHT DISASTER AREAS.

33 (a) The commissioners court of a county may request the governor to
34 proclaim the county a drought disaster area. If the governor issues the
35 proclamation, the county is a drought disaster area, for the length of
36 time specified in the proclamation.

37 (b) A person may drill a water well for compensation in a drought
38 disaster area, even though he is not licensed under this Act.

39 Sec. 37. ACT DOES NOT APPLY TO PERSONS DRILLING CERTAIN
40 WELLS. The provisions of this Act do not apply to a person

41 (1) constructing a hand-dug or drive point water well;

42 (2) drilling test or blast holes in quarries or mines; or

43 (3) drilling or making a well or excavation for the purpose of
44 exploring for or producing oil, gas, or any other mineral except water.

45 Sec. 38. PENALTY. (a) A person who violates the provisions of
46 Section 22 of this Act is guilty of a misdemeanor and upon conviction is
47 punishable by a fine of not less than \$25 nor more than \$200 or by con-
48 finement in the county jail for not more than 120 days, or by both.

49 (b) Each day a person is in violation of the provisions of Section 22
50 of this Act is a separate offense.

51 SUBCHAPTER E. TEMPORARY PROVISIONS.

52 Sec. 39. A person actively engaged in the water well drilling
53 business on the effective date of this Act is entitled to a license without
54 examination if he

55 (1) returns application forms to the commission showing infor-
56 mation specified in rules of the board;

57 (2) pays the application fee.

1 Sec. 40. The governor may appoint to the initial board unlicensed
2 water well drillers who are otherwise qualified to serve on the board.

3 Sec. 41. Initial board members are appointed two for two years;
4 two for four years, and one for six years. Their terms expire on
5 September 15 of the years in which their terms expire.

6 Sec. 42. Chapter 458, Acts of the 57th Legislature, Regular
7 Session, 1961 (Article 7621c, Vernon's Texas Civil Statutes), is
8 repealed.

9 Sec. 43. The importance of this legislation and the crowded condi-
10 tion of the calendar in both houses create an emergency and an imperative
11 public necessity that the Constitutional Rule requiring bills to be read on
12 three several days in each house be suspended, and the Rule is hereby
13 suspended.

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S.B. No. 230

A BILL
To Be Entitled

Hall

AN ACT relating to regulating the business conduct of persons drilling water wells; placing the duty and expense of plugging water wells on the owner of the well or on the person having the well drilled; repealing Chapter 458, Acts of the 57th Legislature, Regular Session, 1961; and declaring an emergency.

FEB 10 1965

Read first time

and referred to Committee

on State Affairs